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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL VONTRE JAMES,

Defendant and Appellant.

F067002

(Super. Ct. No. 09CM2261)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kings County. Thomas DeSantos, Judge.

Diane Nichols, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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* Before Poochigian, Acting P.J., Franson, J. and Peña, J.

PROCEDURAL SUMMARY

Appellant Michael Vontre James appeals from the trial court's denial of his motion for sentence reduction pursuant to Penal Code section 1170.126.¹ On May 2, 2011, this court filed our first opinion in appellant's case.² We affirmed appellant's conviction for intimidating a witness (§ 136.1, subd. (a)(1)) and his sentence of 25 years to life plus 10 years based on two or more prior serious felony convictions pursuant to the three strikes law. We held that the trial court did not abuse its sentencing discretion in denying appellant's motion to reduce his felony conviction for section 136.1, subdivision (a)(1) to a misdemeanor pursuant to section 17, subdivision (b). We also held that the trial court did not abuse its sentencing discretion in refusing to strike one or more of appellant's prior serious felony convictions pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

On January 31, 2013, appellant filed a petition to recall his sentence pursuant to section 1170.126. On February 20, 2013, the trial court summarily denied appellant's petition without a hearing. The court found that appellant's conviction was a serious felony under section 1192.7, subdivision (c)(37) and this disqualified appellant from resentencing under the provisions of subdivision (b) of section 1170.126. Appellant appealed from the trial court's order denying his petition. Appellate counsel has filed a brief seeking independent review of the case by this court pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).

¹ Unless otherwise designated, all statutory references are to the Penal Code.

² Appellant's first appeal before this court was case No. F059611, which was consolidated with case No. F059415, *People v. Tunstall*, et al. On August 26, 2014, we denied appellant's request for judicial notice and his alternative motion pursuant to California Rules of Court, rule 8.147(b) to incorporate by reference the file and record of appellant's trial and first appeal. We granted appellant's request to take judicial notice of our opinion in his first appeal.

APPELLATE COURT REVIEW

Appellant's appointed appellate counsel has filed an opening brief that summarizes the pertinent facts, raises no issues, and requests this court to review the record independently. (*Wende, supra*, 25 Cal.3d 436.) The opening brief also includes the declaration of appellate counsel indicating that appellant was advised he could file his own brief with this court. By letter on July 24, 2013, we invited appellant to submit additional briefing. To date, he has not done so.

Appellant, however, asked his appellate counsel to ask this court to consider the issue of whether the trial court's ruling on his petition filed pursuant to section 1170.126 should have also addressed the issue of whether his conviction for section 136.1, subdivision (a)(1) should have been treated as a misdemeanor under section 17, subdivision (b).

We find that this contention has been decided by prior decisions of both the trial court and this court and is barred from further appellate review. Collateral estoppel precludes relitigation of issues argued and decided in prior proceedings. (*People v. Santamaria* (1994) 8 Cal.4th 903, 912, 916; *People v. Quarterman* (2012) 202 Cal.App.4th 1280, 1288-1299.) When the reviewing court on appeal states in its opinion a principle or rule of law necessary to the decision, that ruling becomes the law of the case both in the lower court and the subsequent appeal. (*People v. Turner* (2004) 34 Cal.4th 406, 417-419.) The doctrine of law of the case prevents parties from seeking appellate reconsideration of an issue already decided in the same case absent some significant change in circumstances. (*People v. Sons* (2008) 164 Cal.App.4th 90, 99.)

In the instant action, this court rejected appellant's argument in his first appeal that the trial court erred in failing to reduce his felony conviction for section 136.1, subdivision (a)(1) to a misdemeanor. Appellant was not entitled to relitigate this issue in his section 1170.126 motion or on this appeal from the trial court's ruling on that motion. Appellant is barred by res judicata and the law of the case doctrine from seeking a second

review of an identical issue already decided in his first appeal. We conclude there is no merit to this contention.

After independent review of the record, we have concluded there are no reasonably arguable legal or factual issues.

DISPOSITION

The judgment is affirmed.